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I. STATEMENT OF POLICY

The Family and Medical Leave Act of 1993 (FMLA) was enacted to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity.

In compliance with FMLA it is the policy of the Department of Children and Family Services (DCFS) to provide eligible employees up to twelve (12) workweeks (480 hours) of "job-protected" FMLA unpaid leave during any twelve (12) month period for one or more of the following reasons:


- the birth and care of an employee's child;
- the placement of a child with the employee for adoption or foster care;
- the employee is needed to care for a spouse, child or parent with a serious health condition; or,
- the employee cannot work due to his/her own serious health condition, and
- any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty or has been notified of an impending call or order to covered active duty in the Armed Forces.

Military Caregiver Leave

The FMLA also provides an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember who is undergoing medical treatment, recuperation, or therapy for a serious illness or injury up to 26 workweeks of leave in a single 12-month period to care for the servicemember.

The "single 12-month period" for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established for other types of FMLA leave.

During this single 12-month period, an eligible employee is entitled to a combined total of 26 workweeks for FMLA military caregiver leave and all other FMLA leave, but only 12 of the 26 weeks total may be for a FMLA-qualifying reason other than to care for a covered service member. For example: If an eligible employee, during the "single 12-month period," takes 16 weeks of FMLA leave to care for a covered servicemember, he/she is limited to 10 weeks of FMLA leave to care for a newborn child. If the employee takes only two weeks of FMLA leave to care for a covered servicemember, he/she is limited to 12 weeks of FMLA leave to care for the newborn child.

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Basic Provisions

It is unlawful to deny eligible employees FMLA leave for FMLA-qualifying conditions. It is also unlawful to consider an employee's use of FMLA leave as a negative factor in employment actions, such as hiring, promotions, performance ratings, discipline, etc.

The FMLA entitles eligible employees to take up to 12 (or 26 for military caregiver family leave) work weeks of unpaid, job protected leave in a 12-month period for specified family and medical reasons and allows employers to require employees to use accrued paid leave balances for FMLA purposes. Accordingly, DCFS requires the use of applicable paid leave balances (annual, compensatory, and sick) for FMLA entitlements. When applicable paid leave balances are exhausted, leave without pay shall be granted in order to provide the employee with the full 12 (or 26, when applicable) workweek entitlement.

Eligible employees with serious health conditions will not be terminated under Civil Service Rule 12.6 (a) for exhaustion of sick leave unless the eligible employee has first been granted 12 weeks of family leave, paid or unpaid, during the past 12 months.

The 12-month eligibility period begins on the date the employee's initial FMLA leave begins.

FMLA leave may be taken on a continuous basis, intermittently (without a fixed schedule) or on a reduced work schedule (fixed schedule with reduced hours). Leave on an intermittent or reduced schedule will be granted when deemed appropriate.

All DCFS Office locations (statewide) are **required** to conspicuously post and keep posted on their premises the notice entitled [Employee Rights and Responsibilities Under the Family and Medical Leave Act](#), which is distributed by the U.S. Department of Labor.


II. PROCEDURE

A. FMLA Notice of Eligibility

When an employee requests FMLA leave, or when the supervisor acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the supervisor must notify the employee of the employee's eligibility to take FMLA leave via the FMLA Notice of Eligibility and Rights and Responsibilities Form ([Adobe](#) version, [Word](#) version) within **five** business days, absent extenuating circumstances. (Note: If a supervisor suspects an absence may be FMLA-qualifying, he/she is obligated to inquire further and determine reasons for the absence. The employee need not mention or actually request FMLA.)

B. Certification

The supervisor shall indicate on the FMLA Notice of Eligibility and Rights and Responsibilities Form ([Adobe](#) version, [Word](#) version) that the employee's request for FMLA leave must be

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supported by the applicable certification form. It is the employee's responsibility to provide a complete and sufficient certification. The employee has 15 calendar days from receipt of the request to provide the supervisor with the certification form. The supervisor may require the original signature of the health care provider on the applicable form.

If an employee fails to provide the requested certification within the allotted time, the supervisor may delay FMLA leave until the employee submits the certification form. If an employee never produces a requested certification, the leave is **not** FMLA leave and the employee's absence is not protected by the FMLA. As a common-sense practice, however, and in order to afford the FMLA-eligible employee with FMLA protection, the supervisor shall designate the leave as FMLA when the supervisor has personal knowledge that the employee's absence is due to an FMLA-qualifying condition even if the certification is not provided. The supervisor will notify the employee of the FMLA designation via the FMLA Designation Notice Form.


An employee who requests FMLA leave on the basis of a "qualifying exigency" resulting from the fact that the employee's spouse, son, daughter or parent is on covered active duty or called to covered active duty shall be required to complete and submit, the Certification of Qualifying Exigency for Military Family Leave Form. As specified on the form, documentation confirming the covered servicemember's active duty orders must also be submitted.

An employee who requests FMLA leave to care for a covered servicemember with a serious injury or illness shall be required to submit the Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave as completed by an authorized health care provider **or** by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family.

C. Recertification

Non-military FMLA: A supervisor may request subsequent re-certification of medical conditions no more often than every 30 days. If the minimum duration specified on the applicable health care provider certification form is more than 30 days, however, the supervisor may not request re-certification until that minimum duration has passed unless the employee requests an extension of leave, circumstances described on the previous certifications have changed significantly, or the supervisor receives information that casts doubt upon the continuing validity of the certification. If there is no specified end date for the duration of the medical condition (i.e., "ongoing," "undetermined," or left blank), medical recertification may be required no more often than every 30 days. In any case, however, recertification of an ongoing condition may be required every six months in conjunction with an absence. Additionally, for medical conditions that last longer than a year, employees may be requested to provide recertifications for each new FMLA eligibility period.

Military FMLA: No recertifications may be requested for military caregiver or qualifying exigency FMLA.


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Questionable Certifications: The health care provider certification forms must be taken at face value. A supervisor may not ask for additional or clarifying information unless the writing is illegible, sections are incomplete or responses vague or ambiguous, in which case the supervisor shall specify in writing via the FMLA Designation Notice Form ([Adobe](#) version, [Word](#) version) what information is illegible, incomplete or insufficient, and give the employee seven calendar days to cure the deficiency. If questions still exist after receipt of the health care provider's response, and provided the employee authorizes the health care provider to clarify the certification to the agency, a DCFS-authorized health care provider, Human Resources professional, or management official may contact the health care provider for purposes of authentication or clarification. "Authentication" means requesting the health care provider who signed the certification form to verify that he/she completed or authorized the information contained on the certification form. "Clarification" means contacting the health care provider to understand the handwriting on the form or to understand the meaning of a response. **At no time, however, may the employee's direct supervisor contact the health care provider or may the health care provider be requested to provide additional information beyond that required by the certification form.** If an employee chooses not to provide DCFS with authorization allowing the employer to clarify the certification with the health care provider, or does not provide the health care provider with authorization to release the information or does not otherwise submit a complete and sufficient certification, DCFS may deny the taking of FMLA leave.

For non-military FMLA leave, a supervisor who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the Department's expense. The appointing authority or designee is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider cannot be employed on a regular basis by the state.

If the opinion of the employee's and the appointing authority's designated health care providers differ, the appointing authority (or designee) may require the employee to obtain certification from a third health care provider, again at the Department's expense. The third opinion shall be final and binding. The third health care provider must be agreed upon jointly by the appointing authority (or designee) and the employee. If the appointing authority (or designee) does not attempt in good faith to reach agreement on whom to select for the third opinion provider, the appointing authority (or designee) will be bound by the first certification. If the employee does not attempt in good faith to reach agreement on whom to select for the third opinion provider, the employee will be bound by the second certification.

Second and third opinions are **not** permitted for certification of a covered servicemember's serious injury or illness or of a qualifying exigency. An employer may use a health care provider, a human resource professional, a leave administrator, or a management official – but not the employee's direct supervisor – to authenticate or clarify a medical certification of a serious injury or illness, or an ITO or ITA. Additionally, if a request for qualifying exigency leave involves a meeting with a third party, an employer may verify the schedule and purpose of the

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meeting with the third party. An employer may also contact the appropriate unit of the Department of Defense to confirm that the covered military member is on active duty or call to active duty status.

Fitness for Duty: After an extended absence or when reasonable job safety concerns exist, the employee may be required to submit a physician's statement indicating that he/she is able to return to work and/or perform the essential functions of his/her job. If the employee will be required to present a fitness-for-duty certification to be restored to employment, the supervisor must indicate such on the FMLA Designation Notice Form ([Adobe](#) version, [Word](#) version). If the fitness-for-duty certification must address the employee's ability to perform the essential functions of the employee's position, the supervisor must also attach a list of the essential functions of the employee's position to the FMLA Designation Notice Form ([Adobe](#) version, [Word](#) version). If the employee has a disability covered by the Americans with Disabilities Act (ADA), the appointing authority will make reasonable accommodation in allowing the employee to return to work.

D. Appointing Authority Responsibilities

The appointing authority for each Division within the Department and supervisors with delegated authority for leave administration are responsible for the administration of this policy within their jurisdiction. This responsibility includes:


1. Familiarizing him/her-self with this policy, applicable procedures and guidelines; including the FMLA Procedures/Documentation for Supervisors in the Supervisor' Personnel Management Handbook (Chapter 6)
2. Understanding that leave requests for FMLA-qualifying conditions from eligible employees cannot be denied;
3. Notifying the employee of his/her eligibility for FMLA leave and of his/her rights and responsibilities through the DCFS Notice of Eligibility Form ([Adobe](#) version, [Word](#) version).
4. Determining whether an employee's request for leave or absence from work should be designated as FMLA leave, regardless of whether the employee actually requests FMLA or mentions FMLA;
5. Providing the applicable certification form to the employee for completion but recognizing that the absence of said form does not negate responsibility to designate applicable leave as FMLA. Certification forms include:
 - a. Certification of Health Care Provider for Employee's Serious Health Condition;

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- b. Certification of Health Care Provider for Family Member's Serious Health Condition;
 - c. Certification of Qualifying Exigency for Military Family Leave; and
 - d. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave.
6. Notifying the employee by using the DCFS Notice of Designation Form ([Adobe version](#), [Word version](#)) that leave is being designated as FMLA leave;
7. Completing and submitting the FMLA Quota Request ([Adobe version](#), [Word version](#)) upon designation of FMLA leave and a copy of the applicable certification form upon receipt to the State Office Human Resources Section ; and,
8. Consulting with the State Office Human Resources Section for additional guidance and/or assistance.

E. Employee Responsibilities

1. Providing the supervisor with sufficient information to determine eligibility for FMLA leave and responding to the supervisor's questions used to determine whether an absence is potentially FMLA-qualifying;
2. Requesting foreseeable FMLA leave as soon as the need for leave becomes known or as soon as practical. An employee who takes intermittent leave for a planned medical treatment is required to make a "reasonable effort" to schedule the treatment so as not to disrupt unduly the employer's operations. In the case of an emergency, notice may be given by the employee's spouse, an adult family member or other responsible party;
3. Submitting a **complete** and **sufficient** certification which may require the employee to authorize the health care provider to release information to DCFS in order to support the employee's FMLA request. This form must be submitted within 15 calendar days from the date of request for the applicable certification;
4. Complying with the Department usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances; and
5. Providing, when requested, periodic updates on the status of his/her FMLA absence and/or intent to return to work, to include recertification's or fitness for duty statements from his/her health care provider.

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F. Leave Designation

FMLA leave requests from eligible employees for FMLA-qualifying conditions cannot be denied, and in all circumstances, it is the supervisor's responsibility to designate leave, paid or unpaid, as FMLA qualifying, based on information provided by the employee. Once the supervisor has enough information to determine whether the leave is being taken for an FMLA-qualifying reason (e.g., upon receipt of a certification), the supervisor must complete and provide the employee with the FMLA Designation Notice Form ([Adobe](#) version, [Word](#) version) within **five** business days, absent extenuating circumstances. Leave designation must be made prior to or while an employee is on leave, unless one of the following situations occurs:


1. The reason for the leave was unknown as FMLA qualifying until the employee returned to work. The supervisor may, upon the employee's return to work, promptly (within five business days) designate the leave retroactively and notify the employee in writing via the FMLA Designation Notice Form ([Adobe](#) version, [Word](#) version).
2. The reason for the leave is known but the supervisor has not been able to confirm that the leave qualifies under FMLA and/or the applicable certification has not been received. The supervisor must make a preliminary designation, and notify the employee via the FMLA Designation Notice Form ([Adobe](#) version, [Word](#) version) at the time leave begins, or as soon as the reason is known. Upon receipt of the information that confirms the leave is for an FMLA reason, the preliminary designation becomes final.

If the information provided fails to confirm the absence was for an FMLA reason, the supervisor must withdraw the designation with a written notice to the employee. An employee must be given multiple, documented opportunities, to provide the required certification form as well as information as to how the non-designation of FMLA may affect the employee before the original designation is rescind.

G. Leave Usage


Both the employee and supervisor are responsible for ensuring that the appropriate type of leave is used for FMLA purposes. The employee must designate on the Application for Leave form and time sheets the type of leave that will be used for family leave purposes by using one of the family leave codes: FMLA Self (LBFM), FMLA Family (LAFM), Worker's Comp FMLA (LDFM), or FMLA Unpaid Leave without Pay (LWFM).

1. In cases involving the employee's own serious health condition or temporary disabilities, the employee may be required to request FMLA Self. When the FMLA Self code (LBFM) is entered, the ISIS-HR payroll system first draws down

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from the accrued sick leave balance, then from compensatory (K-time) leave, and then from annual leave. When accrued paid leave balances are insufficient to meet the FMLA entitlement, FMLA Unpaid Leave without Pay (LWFM) will be granted. With the supervisor's approval, however, the employee with accrued compensatory leave may be allowed to request FMLA Family for his/her own serious health condition or temporary disabilities. When FMLA Family is allowed, the ISIS-HR payroll system first draws down from compensatory (K-time) leave. Once K-time is exhausted, the employee must request and the timekeeper must change coding to FMLA-Self in order for accrued sick leave balances to be drawn before annual.

2. In maternity cases, the employee will be allowed up to 12 weeks of family leave for childbirth and childcare; if complications occur, the employee will be allowed to take 16 weeks of leave, in accordance with the State's pregnancy discrimination law, but only 12 weeks can be coded to FMLA. FMLA Self (LBFM) will be granted until the employee is released by her physician, which for a normal pregnancy is 6 weeks from the date of delivery. (As stated in item 1 above, however, employees with compensatory leave balances may be allowed to request FMLA-Family for this period of maternity leave.) After the physician's release, FMLA Family (LAFM) will be granted to provide the remainder of the 12-week family leave entitlement. Unpaid Leave without Pay (LWFM) will only be granted when accrued paid leave balances are insufficient to meet the FMLA entitlement. FMLA Family (LAFM) will also be granted to a father needed to care for his newborn child and to a husband needed to care for his pregnant spouse who is incapacitated as a result of her pregnancy. (The latter type of leave is not however available to a boyfriend or fiancée who is the unborn child's father.)
3. When family leave is requested by an eligible employee to care for a spouse, child, or parent with a serious health condition, the employee will be required to take FMLA Family leave. When the FMLA Family Leave code (LAFM) is entered, the ISIS-HR payroll system first draws down from any accrued K-time and then from the annual leave balance. When accrued paid leave balances are insufficient to meet the FMLA entitlement, FMLA Unpaid Leave without Pay (LWFM) will be granted.
4. If FMLA leave is necessary due to an eligible employee's FMLA-qualifying, serious health condition that resulted from an "on-the-job" injury, the Workers' Comp FMLA code (LDFM) is used. The employee's 12-week FMLA leave entitlement runs concurrently with the workers' compensation absence. If a health care provider certifies the employee is eligible to return to a "light-duty job," the employee is entitled to remain on FMLA leave until the 12-week entitlement is exhausted. However, a refusal to accept a light-duty assignment could mean suspension of workers' compensation benefits. Time spent performing "light duty" work does not count against an employee's FMLA leave

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entitlement and the employee's right to restoration is held in abeyance during the period of time the employee performs light duty (or until the end of the applicable 12-month FMLA leave year). If an employee is voluntarily performing a light duty assignment, the employee is not on FMLA leave.

H. Benefits

During any FMLA leave, the Department must maintain the employee's coverage under any group/life health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

DCFS will pay for the employee's share of his/her Group Benefits/HMO's health and life insurance premiums when the employee is on **unpaid** leave (LWFM) for FMLA purposes. Should the employee inform the Department of his/her intent not to return from leave; fail to return from leave, thereby terminating employment; or exhaust his/her FMLA leave entitlement, DCFS shall then cease payment of insurance premiums.

When the employee returns to work from unpaid FMLA leave, the Department has the right under FMLA to recover the employee's share of the premium that was paid by the Department. If the employee does not return to work following FMLA leave (for a reason other than the continuation, recurrence, or onset of a serious health condition which would entitle the employee or a covered service member to FMLA leave or other circumstance beyond one's control), he/she will be required to reimburse DCFS for the employee share of health/life insurance premiums paid on his/her behalf.


I. Records

FMLA provides that supervisors shall make, keep, and preserve records pertaining to their obligations under the [Act](#) in accordance with the recordkeeping requirements of section 11(c) of the Fair Labor Standards Act (FLSA).

Records specified by these regulations must be kept no less than three years and be available for inspection, copying, and transcription by representatives of the Department of Labor upon request.

Items required:

1. Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid;
2. Dates FMLA is taken by employees;

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3. If FMLA leave is taken in increments of less than one full day, the hours of the leave;
4. Copies of employee notices of leave (application for leave shall indicate FMLA in "Remarks" section);
5. Any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave;
6. Premium payments of employee benefits;
7. Records of any dispute between the employer and an employee regarding designation of leave as FMLA leave;
8. For employees who take FMLA leave intermittently or on a reduced leave schedule, a written record of agreement;
9. Medical certifications, recertifications or medical histories of employees or employees' family members shall be maintained in separate files and be treated as confidential.

J. Serious Health Condition


Any illness, injury, impairment, or physical or mental condition that involves one of the following:

Hospital Care: Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

Incapacity means the inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment for, or recovery from.

Absence Plus Treatment: A period of incapacity of more than **three consecutive, full calendar days** (including any subsequent treatment or period of incapacity relating to the same condition), **that also involves:**

1. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist under orders of, or on referral by, a health care provider.) The two visits must occur within 30 days of the beginning of the period of incapacity and the first visit to the health care provider must take place within seven days of the first day of incapacity. Treatment includes examinations to determine if a serious health condition exists and evaluations of

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the condition, but does not include routine physical, eye or dental examinations); or

2. Treatment by a health care provider on at least **one occasion** which results in a regimen of continuing treatment under the supervision of a health care provider. The first visit to the health care provider must take place within seven days of the first day of incapacity. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of treatment does **not** include the taking of over-the-counter medications, bed-rest, drinking fluids, exercise, or other similar activities that can be initiated without a visit to a health care provider.

Pregnancy: Any period of incapacity due to pregnancy, or for prenatal care.


Chronic Conditions Requiring Treatments: A chronic condition is one which:

1. Requires periodic (at least two per year) visits for treatment by a health care provider as defined under definitions.
2. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
3. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). A period of incapacity for a chronic condition qualifies for FMLA leave even if it lasts less than three days.

Permanent/Long-term Conditions Requiring Supervision: A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective.

The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider (i.e., Alzheimer's, a severe stroke or terminal stages of a disease).

Multiple treatments (Non-Chronic Conditions): Any period of absence to receive multiple treatments (including any period of recovery from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

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Examples of serious health conditions include, but are not limited to:


- Appendicitis
- Back conditions requiring extensive therapy or surgical procedures
- Emphysema
- Heart Attacks
- Heart conditions requiring bypass or valve operations
- Injuries caused by serious accidents
- Most cancers
- Pneumonia
- Pregnancy, including severe morning sickness, prenatal care, childbirth and recovery from childbirth
- Restorative dental or plastic surgery after an injury, provided "serious health condition" criteria met (see section J above)
- Removal of cancerous growths, provided "serious health condition" criteria met (see Section J above)
- Allergies, provided "serious health condition" criteria met (see section J above)
- Severe arthritis
- Severe nervous disorders
- Severe respiratory conditions
- Severely ill but not receiving continuing active care from a doctor, such as Alzheimer's, late-stage cancer, severe stroke, etc.
- Strokes
- Treatment for substance abuse if inpatient hospital care and continuing treatment are required

Intermittent FMLA leave or a reduced work schedule may be medically necessary for the following examples of serious health conditions including, but not limited to:

1. A course of medication or therapy to resolve condition;
2. Treatment for early stage cancer (chemotherapy);
3. Physical therapy after a hospital stay or because of severe arthritis; or
4. Prenatal care.

Examples of what's **not** a serious health condition and may not qualify for FMLA leave include, but are not limited to:

1. Cosmetic treatments (such as most treatments for acne or plastic surgery) unless inpatient hospital care is required or unless complications develop;
2. An absence from work because of the employee's **use** of alcohol or drugs, rather

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than for substance abuse treatment;

3. Stress, by itself, is not a serious health condition, but "mental illness resulting from stress" is;
4. The common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., unless complications arise; or
5. Routine preventive physical examinations.

III. FORMS AND INSTRUCTIONS

FMLA Notice of Eligibility and Rights and Responsibilities Form ([Adobe](#) version, [Word](#) version)

Certification of Qualifying Exigency for Military Family Leave Form

Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave

[FMLA Designation Notice Form](#) ([Adobe](#) version, [Word](#) version)

DCFS Notice of Eligibility Form ([Adobe](#) version, [Word](#) version).

Certification of Health Care Provider for Employee's Serious Health Condition

Certification of Health Care Provider for Family Member's Serious Health Condition

FMLA Quota Request ([Adobe version](#), [Word version](#))

[Fair Labor Standards Act \(FLSA\).](#)

IV. REFERENCES


The Family and Medical Leave Act of 1993 (FMLA)

Civil Service Rule 12.6 (a)

[Employee Rights and Responsibilities Under the Family and Medical Leave Act](#)

101(1)(13)(B), United States Code

FMLA Procedures/Documentation for Supervisors in the Supervisor' Personnel Management Handbook (Chapter 6)

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Americans with Disabilities Act (ADA)

DEFINITIONS:

Eligible Employee

An employee who has been **employed** for a total of at least **12 months** by the State of Louisiana on the date on which any FMLA leave is to commence **and** who, on the date on which any FMLA leave is to commence, has **actually worked** at least **1,250 hours** for the State of Louisiana during the previous 12-month period.

- The 12 months of employment need not be consecutive, but employment prior to a continuous break in service of seven (7) years or more is not counted unless the break in service is due to military obligation, or other written agreement; if an employee is maintained on the payroll for any part of a week, the week counts as a week of employment.
- Both spouses however are each entitled to their full 12 weeks of FMLA leave for their own serious health condition or to care for a spouse or child with a serious health condition.
- Overtime hours are counted as hours actually worked. Paid leave and unpaid leave, including FMLA leave, are not counted as hours actually worked.
- With respect to employees absent due to military service, months and hours that the employee would have worked, but for his or her military service, are counted towards the 12-months/1,250 hours of employment.
- Spouses employed by the State of Louisiana are limited to a **combined** total of 12 workweeks of FMLA leave when taken for the birth or care of a child; the placement and/or care of a child for adoption or foster care; or to care for an employee's parent who has a serious health condition. If the husband and wife both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the husband and wife would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took 6 weeks of leave to care for a parent, each could use an additional 6 weeks due to his or her own serious health condition or to care for a child with a serious health condition.
- When spouses are both employed by the State of Louisiana and eligible for FMLA leave, they are limited to a combined total of 26 weeks for FMLA military

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caregiver leave or for a combination of FMLA military caregiver leave and all other FMLA leave during the single twelve-month period during which military caregiver leave is taken. When FMLA military caregiver leave is taken in combination with FMLA for the birth and care of a child, placement of a child with the employee for adoption or foster care, or care for a parent with a serious health condition, the spouses are limited to a combined total of 12 weeks for the non military caregiver FMLA. When FMLA military caregiver leave is taken in combination with FMLA for the employee's own serious health condition or to care for a child or spouse with a serious health condition, each spouse may take up to 12 weeks for the non military caregiver FMLA.

Health Care Provider

- A doctor of medicine or osteopathy who is authorized to practice medicine or surgery;
- Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist) authorized to practice and performing within the scope of their practice;
- Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice and who are performing within the scope of their practice;
- Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts;
- Any health care provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; or
- A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country.

Incapable of Self Care

The individual requires active assistance or supervision to provide daily self-care in several (3 or more) of the "activities of daily living" or "instrumental activities of daily living" (i.e., caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.)

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Parent

The biological, adoptive, step or foster father or mother or an individual who stands or stood in loco parentis when the employee was a son or daughter as defined below. This term does not include parents "in-law". In loco parentis refers to those individuals with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

Physical or Mental Disability

Physical or mental impairment that substantially limits one or more of the major life activities (i.e., walking, breathing, hearing, seeing, learning, working, etc.).

Serious Health Condition

An illness, injury, impairment, or physical or mental condition that involves one of the Following:

- Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or residential medical care facility;
- Any period of incapacity requiring absence from work of more than 3 calendar days and that also involves continuing treatment of a health care provider; or
- Continuing treatment by a health care provider for prenatal care or for a chronic or long-term health condition that is incurable or so serious that if not treated would likely result in a period of incapacity of more than 3 calendar days.


(See Section J, Serious Health Condition, of this policy for more detailed information).

Son or Daughter

A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or 18 years of age or older and incapable of self care because of a mental or physical disability. Note: For Military Caregiver Leave and qualifying exigency leave, a son or daughter may be of any age.

Spouse

A husband or wife as defined or recognized under State law for purposes of marriage.

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Terms used with respect to family leave related to military service

Covered Active Duty:


- in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and,
- In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(1)(13)(B), United States Code.

Covered Service Member:

- a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

Next of Kin:

The nearest blood relative of an individual, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under FMLA, in which case the designated individual shall be deemed to be the covered servicemember's next of kin. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.

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Outpatient Status


Status of a member of the Armed Forces assigned to:

- A military medical treatment facility as an outpatient; or
- A unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

Qualifying Exigency

The following circumstances arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty, or has been notified of an impending call or order to covered active duty in the Armed Forces

- Issues arising from a covered military member's **short-notice deployment** (i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification;
- **Military events and related activities**, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs, and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross;
- Certain **childcare and school activities** arising from covered active duty or call to covered active duty of a covered military servicemember, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at school or a day care facility if they are necessary due to circumstances arising from the covered active duty or call to covered active duty of the covered military servicemember;
- Making or updating **financial and legal arrangements to address a covered military servicemember's absence**;
- Attending **counseling** provided by someone other than a health care provider for oneself, the covered servicemember, or the child of the covered servicemember, the need for which arises from the covered active duty or call to active duty of the covered servicemember;
- Taking up to five days of leave to spend time with a covered servicemember who is on short-term temporary, **rest and recuperation** leave during deployment;

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- Attending to certain **post-deployment activities**, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered service member's covered active duty status, and addressing issues arising from the death of a covered servicemember; and
- Any other event not encompassed in the other categories, but agreed to as a qualifying exigency by the employer and employee

Serious Injury or Illness

- in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; or
- in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.